

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matters of

Deployment of Wireline Services Offering)	CC Docket No. 98-147
Advanced Telecommunications Capability)	
)	
Petition of Bell Atlantic Corporation)	CC Docket No. 98-11
For Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	
)	
Petition of U S West Communications, Inc.)	CC Docket No. 98-26
For Relief from Barriers to Deployment of)	
Advanced Telecommunications Services)	
)	
Petition of Ameritech Corporation to)	CC Docket 98-32
Remove Barriers to Investment in)	
Advanced Telecommunications Technology)	
)	
Petition of the Alliance for Public)	CCB/CPD No. 98-15
Technology Requesting Issuance of Notice)	RM 9244
Of Inquiry and Notice of Proposed)	
Rulemaking to Implement Section 706 of)	
The 1996 Telecommunications Act)	
)	
Petition of the Association for Local)	CC Docket No. 98-78
Telecommunications Services (ALTS) for a)	
Declaratory Ruling Establishing Conditions)	
Necessary to Promote Deployment of)	
Advanced Telecommunications Capability)	
Under Section 706 of the Telecommunications)	
Act of 1996)	
)	
Southwestern Bell Telephone Company,)	CC Docket No. 98-91
Pacific Bell, and Nevada Bell Petition for)	
Relief from Regulation Pursuant to)	
Section 706 of the Telecommunications Act)	
Of 1996 and 47 U.S.C. § 160 for ADSL)	
Infrastructure and Service)	

COMMENTS OF PRISM COMMUNICATION SERVICES, INC.

Dated: September 24, 1999

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SUMMARY OF THE ARGUMENT

In an effort to exclude Prism and other carriers from the advanced services market, U S WEST concocts the argument that the obligations of incumbent LECs under Section 251(c) of the Telecommunications Act of 1996 (“Act”) do not apply to xDSL-based advanced services. The crux of U S WEST’s argument is that xDSL services are neither “telephone exchange services” nor “exchange access” and, therefore, providers of such services are not “local exchange carriers” within the meaning of the Section 251(c) of the Act. Not only is U S WEST’s argument absurd from a policy standpoint, it has no merit under the law.

The threshold premise in U S WEST’s argument is that the obligations of Section 251(c) only apply to “local exchange carriers.” U S WEST advances an overly-narrow interpretation of the statute. Other than the incumbent LECs’ duty to provide for interconnection “for the transmission and routing of telephone exchange service or exchange access,” the obligations set forth under Section 251(c) refer to “telecommunications carriers” and “telecommunications services,” which are more broadly defined under the Act than a local exchange carrier. As U S WEST’s fundamental premise fails, so goes its resulting argument.

However, even if U S WEST is correct that Section 251(c) is limited to the services offered by local exchange carriers, advanced services such as xDSL-based services meet that standard. In support of its argument, U S WEST claims that Section 251(c) only applies to the circuit-switched network associated with traditional voice services and excludes the packet-switched network associated with more advanced services, such as xDSL.

U S WEST's position is absurd. Congress did not prescribe a regulatory distinction between a circuit-switched and packet-switched network. The obligations of Section 251(c) are not determined by the mode of transmission. Moreover, in passing the 1996 Act, Congress amended the definition of "telephone exchange services," and thereby the definition of "local exchange carrier," for the purpose of accommodating advanced services, such as xDSL-based services.

U S WEST's weak attempt to circumvent its obligations under the Act demonstrates the length to which it and the other ILECs will go to retain their monopolies. U S WEST's specious arguments in the proceeding must be viewed in the context of the bigger picture – where the incumbent LECs are failing every day to meet their obligations under Section 251(c) – to understand the incumbent LECs' true intent and ceaseless efforts to slow down, if not prevent altogether, the forward march of technology and competition.

For these reasons, the Commission should find that the obligations of Section 251(c) of the Act apply to xDSL-based advanced services. In other words, the Commission should find that the obligations of Section 251(c) are not restricted to circuit-switched technology, but are available to carriers employing a packet-switched network and offering high-speed data services. Indeed, because xDSL technology may only be the "flavor of the month," which will inevitably change with advances in technology, the Commission should make a finding that the requirements of Section 251(c) are technology neutral and apply more broadly to advanced telecommunications services.

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Petition of the Alliance for Public Technology Requesting Issuance of Notice Of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of The 1996 Telecommunications Act)	CCB/CPD No. 98-15 RM 9244
)	
Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996)	CC Docket No. 98-78
)	
Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act Of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service)	CC Docket No. 98-91
)	

COMMENTS OF PRISM COMMUNICATION SERVICES, INC.

Prism Communication Services, Inc. ("Prism") hereby responds to the Commission's Request for Comments in connection with the United States Court of Appeals for the District of Columbia Circuit's Remand of the August 1998 Advanced Services Order.¹

I. INTRODUCTION

In its decision released August 7, 1998 (the "Advanced Services Order"),² the Commission considered the petitions filed by four Bell Operating Companies, including U S WEST Communications, Inc. ("U S WEST"), requesting that the Commission forbear from applying the obligations of Section 251(c) of the Telecommunications Act of 1996 (the "Act")³ to advanced services. In its Advanced Services Order, the Commission concluded that incumbent local exchange carriers ("ILECs") are subject to the market-opening requirements of section 251 of the Act and, more specifically, that ILECs are subject to the interconnection and unbundling obligations of section 251(a) and 251(c)(2) with respect to both their circuit-switched and packet-switched networks.⁴ That is, the Commission found, *inter alia*, that the interconnection and unbundled access

¹ In the Matter of Petition for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-91, 98147, *Public Notice Requesting Comments in Connection with Court Remand of August 1988 Advanced Services Order*, DA 99-1853 (rel. September 9, 1999) ("Notice").

² In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-11, 98-26, 98-32, 98-78, 98-81, 98-147 and CB/CPD No. 98-15 and RM 9244, *Memorandum Opinion and Order, and Notice of Proposed Rulemaking*, 13 FCC Rcd 24011 (1988).

³ The 1996 Act is codified at 47 U.S.C. §§ 151 *et seq.*

⁴ Advanced Services Order at ¶¶ 48 & 51.

obligations of section 251(c) of the Act apply to the offering of advanced services that employ digital subscriber line (“DSL”) and packet-switching technologies.⁵ The Commission based this decision on its finding that those services were either “telephone exchange service” or “exchange access” and therefore within the ambit of section 251(c).⁶

U S WEST sought review of the Advanced Services Order in the United States Court of Appeals for the District of Columbia Circuit. In its appeal, U S WEST claims that the Commission erred in finding that advanced services are either telephone exchange service or exchange access. At the Commission’s request, the Court remanded the proceeding back to the Commission in order to allow the Commission to develop a more complete record on this issue.

In the Notice, the Commission requests comment on whether xDSL-based advanced services constitute either “telephone exchange service” or “exchange access” within the meaning of the Act. The FCC further requests comment as to the proper scope of the requirements of section 251(c) upon ILECs generally and in their provision of advanced services specifically. By way of example, the FCC solicits comments on whether the Section 251(c) applies to all telecommunications services and facilities offered by an ILEC regardless of whether the services or related facilities constitute telephone exchange service or exchange access. In other words, the Commission asks how the fact that section 251(c) sets forth obligations of incumbent local exchange *carriers*, and is not on its face limited to particular telecommunications *services*, affect

⁵ Id.

⁶ Id. at ¶ 40.

the provision's applicability to ILEC offerings other than telephone exchange service or exchange access.

II. SUMMARY OF PRISM'S OPERATIONS AND ITS POSITION IN THIS PROCEEDING.

A. Prism's Operations.

Like other competitors in the advanced telecommunications services industry, Prism was formed in response to the 1996 Act to provide advanced telecommunications services to meet the exploding demand for bandwidth as well as the need for competitive voice services.⁷ Prism provides high-speed data, voice and Internet connectivity across the existing copper telephone infrastructure. Prism, therefore, is a next-generation communications provider or a "full service" CLEC because it offers its customers both local and long distance telephone services in addition to reliable high-speed access to the Internet or corporate "intranets."

To offer these services, Prism uses an innovative asymmetrical technology, Nortel's 1 Meg Modem service, which it calls consumer digital modem ("CDM"). CDM uses an integrated line card and shares many of the characteristics of the "light" version of ADSL technology, such as G.lite.⁸ Like G.lite, CDM is a splitterless system that will ultimately be capable of access rates up to 1.2 Mbps downstream and up to approximately 320 kbps upstream, and which is typically spectrally compatible with the

⁷ Prism's parent company, Prism Communication Services, Inc., a wholly-owned subsidiary of Comdisco, Inc., has committed \$450 million to its state-of-the-art, high-speed, digital, meshed telephone and data communications network.

⁸ The G.lite standard has been approved by the International Telecommunications Union, *see* <http://itu.int/newsroom/press/releases/1999/99-10.html>, and ANSI approval of the standard is expected shortly.

existing copper infrastructure. Because Prism's technology runs at lower speeds and bandwidth than other versions of ADSL, Prism avoids many of the interference concerns and loop conditioning requirements associated with traditional DSL technology.⁹

Further, Prism's technology requires neither DSLAM bays nor the installation of a voice/data splitter, thereby representing a more efficient means of offering services to the public. In sum, CDM represents one of the least expensive ways for carriers to upgrade their existing switch infrastructure to support high-speed data and voice over a single twisted pair copper wire.

B. Prism's Position.

Notwithstanding these unique characteristics of Prism's technology, Prism shares a very real concern with other xDSL providers – the need for nondiscriminatory and timely access to unbundled network elements and the ability to interconnect with the ILECs' networks. At its most basic level, without access to copper loops and interoffice facilities, Prism is incapable of offering its services.

In an effort to exclude Prism and other carriers from the advanced services market, U S WEST concocts the argument that the ILECs' obligations under Section 251(c) of the Act do not apply to xDSL services.¹⁰ In effect, U S WEST and its brethren wish to be the sole providers of advanced service, such as xDSL. If nothing else, this

⁹ Indeed, the Commission recently recognized these qualities of Nortel's 1 Meg Modem service and approved its use on any unconditioned loop. *In the Matter of Petition of Northern Telecom Inc. for Waiver of the Signal Power Limitations Contained in Section 68.308(e)(1) of the Commission's Rules*, File No. NSD-L-98-135, Memorandum Opinion and Order (rel. Jul 30, 1999) ("Nortel Order"). In particular, the Commission recognized that Prism's technology is "loop friendly" with existing and future services in that it is spectrally compatible with the T1.413 version 2 power spectral density ("PSD") mask which defines the technical standard for the provision of ADSL and other like services.

¹⁰ See Brief of Petitioner in *U S WEST Communications, Inc. v. FCC*, No. 98-1410 at 14-15, 16-30 (D.C. Cir. May 17, 1999) ("U S WEST's Brief").

attempt by U S WEST demonstrates the length to which it and the other ILECs will go to retain their monopolies. Not only is U S WEST's argument absurd from a policy standpoint, it has no merit under the law.

In an era of converging technologies, U S WEST seeks to impose a mutually exclusive regulatory distinction between voice and data transmission based on the manner of transmission. U S WEST claims that Section 251(c) only applies to the circuit-switched network associated with traditional voice services and excludes the packet-switched network associated with more advanced services, such as xDSL. In short, U S WEST attempts to hold the communications industry hostage to the 1930s.

As is explained below, there is no basis under the law for U S WEST's position. The obligations of Section 251(c) are technologically agnostic. Congress did not prescribe a regulatory distinction between a circuit-switched and packet-switched network. To the contrary, U S WEST's interpretation flies in the face of the Congressional mandate to encourage the deployment of advanced telecommunications capability to all Americans.¹¹ U S WEST should not be allowed to hide behind an antiquated statutory interpretation in order to avoid competing head-to-head with other carriers in the advanced services market.

In sum, for legal and policy reasons, the Commission should find that the obligations of Section 251(c) of the Act apply to xDSL-based advanced services. That is, the Commission should find that the obligations of Section 251(c) are not restricted to circuit-switched technology, but are available to carriers employing a packet-switched network and offering high-speed data services. Indeed, because xDSL technology may

¹¹ 47 U.S.C. § 157 nt.

only be the “flavor of the month,” which will inevitably change with advances in technology, Congress could not have intended the result that U S WEST seeks to impose on the industry. Thus, the Commission should make a finding that the requirements of Section 251(c) are technology neutral and apply more broadly to advanced telecommunications services.

III. ARGUMENT

Contrary to U S WEST’s position, Congress did not create under the Act a regulatory distinction between voice and data services or between circuit-switched and packet-switched networks. U S WEST, however, attempts to impose these distinctions into the statutory scheme in an effort to force fit its desired result. As explained herein, U S WEST is wrong.

A. U S WEST has Adopted An Overly Narrow Interpretation of the Applicability of Section 251(c) of the Act.

The crux of U S WEST’s argument is that xDSL services are neither “telephone exchange services” nor “exchange access” and, therefore, providers of such services are not “local exchange carriers” within the meaning of the Act.¹² According to U S WEST, Section 251(c) only applies to telephone exchange services and exchange access, as offered by local exchange carriers.¹³

Prism contests U S WEST’s narrow interpretation of the applicability of Section 251(c). The introductory portion of Section 251(c) provides that it is intended to set forth

¹² U S WEST’s Brief at 12-13. A “local exchange carrier” is defined as any person that is engaged in the provision of telephone exchange service or exchange access. 47 U.S.C. § 153(26).

¹³ U S WEST’s Brief at 12-13.

the obligations of ILECs.¹⁴ U S WEST interprets the statute to mean that the obligations set forth in Section 251(c) apply only to “local exchange carriers,” as defined in the Act.

Other than the ILECs’ duty to provide for interconnection “for the transmission and routing of telephone exchange service or exchange access”,¹⁵ the obligations set forth under Section 251(c) refer to “telecommunications carriers” and “telecommunications services,” which are more broadly defined under the Act than a local exchange carrier.¹⁶

For instance, the obligation to negotiate provides that “[t]he requesting telecommunications carrier also has the duty to negotiate in good faith the terms and conditions of the [interconnection] agreements.”¹⁷ In addition, the interconnection obligation provides for the “duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange network”¹⁸ The unbundled access requirement provides for the “duty to provide, to any requesting telecommunications carrier for the provision of a telecommunications service, nondiscriminatory access to network elements on an unbundled basis”¹⁹

Finally, the resale duty simply requires the ILEC to “offer for resale at wholesale rates

¹⁴ The definition of the term Incumbent Local Exchange Carrier, set forth in Section 251(h) of the Act, only identifies those carriers that historically offered telephone exchange services; *i.e.*, the incumbents.

¹⁵ 47 U.S.C. § 251(c)(2)(A).

¹⁶ Telecommunications services are defined as “telecommunications,” *see* 47 U.S.C. § 153(46), which, in turn, is broadly defined as “the transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.” 47 U.S.C. § 153(43).

¹⁷ 47 U.S.C. § 251(c)(1).

¹⁸ 47 U.S.C. § 251(c)(2).

¹⁹ 47 U.S.C. § 251(c)(3).

any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers.”²⁰

U S WEST’s assumption that Section 251(c) only applies to “local exchange carriers” as defined under the Act is clearly incorrect. In other words, the fundamental premise of U S WEST’s argument fails.

B. xDSL-Type Advanced Service Do Fall Within the Ambit of Section 251(c).

Even if U S WEST is correct that Section 251(c) is limited to the services offered by local exchange carriers, advanced services such as xDSL-type services meet that standard. In order to reach its conclusion, U S WEST constructs a mutually exclusive distinction – where none exists – between voice and data services and circuit-switched and packet-switched networks. In U S WEST’s opinion, advanced data-type services, such as xDSL services, are not part of telephone exchange service and, therefore, do not fall within the ambit of Section 251(c). There is absolutely no textual basis in the Act to support this distinction. U S WEST’s insistence that Congress somehow intended or required different treatment of voice and packet-switched services is totally contrived and unfounded.

“Telephone exchange services” is defined under the Act as

- (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or

²⁰

47 U.S.C. § 251(c)(4).

(B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.²¹

Paragraphs (A) and (B) are technology agnostic. There is no reference to “voice” versus “data” or to a “circuit-switched” versus a “packet-switched” network. Indeed, such distinctions would only serve as limiting factors, something Congress clearly did not intend to do. This is particularly true today, in the era of converging technologies, when voice, data and video are converging into indistinguishable modes of communication.

Prism’s operations are illustrative of this point. As a full service CLEC, Prism offers its customers both local and long distance telephone services, in addition to reliable high-speed access to the Internet or corporate “intranets,” over the same copper loop. To provide its services, Prism would obtain a copper loop from the ILEC pursuant to Section 251(c). Over this loop, Prism would transmit its services using packet switching. Although Prism would be offering the service over a packet-switched network, Prism would still be offering service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange.

The only difference, therefore, is the mode of transmission, not the type of service. Indeed, the building blocks of advanced services include the very same ILEC

²¹ 47 U.S.C. § 153(47).

network facilities used to provide traditional telephony services.²² In sum, U S WEST's argument that providers of xDSL-type advanced services are not included in the meaning of a local exchange carriers – merely because they may not be circuit-switched services – has no basis in law or in fact and should, therefore, be rejected.

Moreover, advanced services such as xDSL-type services, also fall within the purview of paragraph (B) of the definition of a telephone exchange service. In contrast to paragraph (A), which was part of the original Communications Act, paragraph (B) of the definition of telephone exchange services was added as part of the 1996 Act. In amending the 1996 Act, Congress expanded the scope of the “telephone exchange service” definition to include “comparable services” to the services provided in paragraph (A), as well as the origination and termination of “telecommunications services.”²³ As explained by Senators Stevens and Burns:

[The 1996 Amendment] would not have been necessary had Congress intended to limit telephone exchange service to traditional voice

²² It is interesting to note that even U S WEST at one time seemingly understood and agreed with Prism. In its Petition for Relief in the underlying proceeding, U S WEST stated:

U S WEST is not asking the Commission to remove the unbundling and resale discount requirements from the underlying “bottleneck” facilities that may be used in voice and data services alike. For example, U S WEST is not suggesting that the Commission should refrain from requiring unbundling of the copper loop simply because it can be used to provide advanced services such as xDSL as well as traditional voice local exchange services. Rather, U S WEST urges the Commission to limit the scope of the unbundling and resale discount rules to those facilities and services that are truly bottlenecks. That category does not include competitive data networking services or advanced services that are used only to provide advanced telecommunications capabilities.

See Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, CC Docket No. 98-26, *Petition for Relief* at 48-49 (filed February 25, 1998). U S WEST went on to explain that what it meant is that the specialized equipment used to provide xDSL, such as DSLAMs and ATM switches, are the facilities which it was claiming should not be subject to the unbundling requirements. *Id.*

²³ 47 U.S.C. § 153(47)(B).

telephony. The new definition was intended to ensure that the definition of local exchange carrier, which hinges in large part on the definition of telephone exchange service, was not made useless by the replacement of circuit-switched technology with other means – for example, packet switches or computer intranets – of communicating information within a local area.²⁴

Indeed, Senators Stevens and Burns further explained that by amending the statute “Congress added new definitions to the Communications Act to respond to the convergence of communications and computer technology and to provide the framework for the new competitive local communications world.”²⁵ It is clear that Congress was certainly aware of the importance of data communications and advanced services in today’s society at the time that it passed the 1996 Act, as evidenced by the addition of paragraph (B) to the definition of telephone exchange services.

Nevertheless, U S WEST advances an overly-narrow definition of “comparable service” in order to exclude xDSL-like advanced services from the application of Section 251(c). U S WEST claims that “comparable service” means those services “which are functionally similar to and can substitute for the switched local services long held to satisfy the original statutory definition set forth in paragraph A of the definition of local exchange service.”²⁶ That is, U S WEST posits that paragraph (B) applies to that which meets its narrow interpretation of paragraph (A). U S WEST’s interpretation of paragraph (B) is based on its misplaced interpretation of paragraph (A) and effectively renders paragraph (B) meaningless.

²⁴ Comments of Senators Stevens and Burns, Federal-State Joint Board on Universal Service, CC Docket No. 96-45 (Report to Congress) (filed January 26, 1998), at 2, n. 1.

²⁵ *Id.* at 2.

²⁶ U S WEST’s Brief at 23.

In amending the statute, Congress clearly did not intend to merely duplicate paragraph (A). To the contrary, as Senators Stevens and Burns explained, Congress amended the statute to provide for those emerging technologies which were not in existence when the Communications Act was first enacted but which have since become a driving force in our economy. In short, advanced services such as xDSL-type services.

IV. CONCLUSION

The deployment of advanced telecommunications capability to all Americans is contingent upon the ability of competitive and innovative providers of advanced telecommunications services to enter the market assured of ready and cost-based access to network elements necessary to provide its services.²⁷ As Section 251(c) is technology agnostic – that is, there is no regulatory distinction between voice and data or circuit-switched and packet-switched technologies – advanced services such as xDSL-type services clearly fall within the scope of Section 251(c) of the Act.

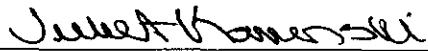
Although U S WEST's position lacks any legal merit, it is even more disturbing in that it further demonstrates the breadth and length to which it and the other ILECs will go to stifle competition and, in the process, maintain their monopoly stronghold over the type and manner of communications offered to the American public. Every step of Prism's evolution has been met with ILEC resistance – facilities are not provisioned, they are provisioned in an untimely manner, or they are provisioned incorrectly by the ILECs. At the same time, the BOCs, such as U S WEST, come before this Commission and state commissions around the country touting their efforts to fulfill the mandates of the Act

²⁷ See, e.g., 47 U.S.C. § 151, which mandates that the Commission regulate in a manner “to make available, so far as possible, to all the people of the United States ... a rapid, efficient, nationwide and world-wide wire and radio communication service ...”

and asking that they be rewarded with allowances such as entry into the intraLATA toll service market. U S WEST's specious arguments in the proceeding must be viewed in this bigger picture to keep in mind their true intent and their ceaseless efforts to slow down, if not prevent altogether, the forward march of technology and competition and all of the benefits which they have brought to this great country.

Respectfully submitted,

PRISM COMMUNICATION SERVICES, INC.

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September 24, 1999

CERTIFICATE OF SERVICE

I, Jane L. Hall, hereby certify that a true and correct copy of the Comments to Remand the Advanced Service Order was hand delivered to the following individuals, this 24th day of September, 1999.

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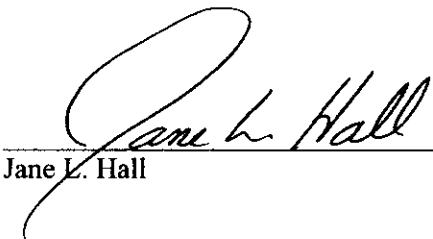
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